

2021

HISTORY OF DRUG TESTING

The wide scale use of drug testing has its foundation in 1986, when President Ronald Reagan issued Executive Order 12564, announcing his intent to create drug-free workplaces. Despite debate in the courts,¹ concerns about privacy among top White House officials,² and no evidence that drug use was significantly impairing workplace performance,³ two years later Congress passed the Drug Free Workplace Act. Since then, drug testing has expanded beyond Federal workers and employees, and millions have been drug tested in the places where we spend most of our waking hours – schools, jobs, and our homes – and throughout the criminal legal system.

For the past 35 years, drug testing has been an essential, yet largely under-examined, pillar of the war on drugs.

DRUG TESTING RELIES ON THE ASSUMPTION THAT ANY DRUG USE IS PROBLEMATIC AND THAT PEOPLE WHO USE DRUGS CANNOT BE RESPONSIBLE, CARING COMMUNITY MEMBERS.

In fact, the vast majority of drug use across all drug types is episodic and does not develop into a substance use disorder.⁴ Drug testing is an often-observed, humiliating, and invasive practice driven by law-and-order politics and fearmongering.⁵ It does not create cultures and places of safety but rather violates autonomy, spies on people in their free time, hastens (re)entry into prison and jail, and strips people of dignity, a social safety net, and family connections. As a multimillion dollar industry, drug testing expands a vast network of surveillance

that monitors, controls, and criminalizes many people at some point in their lives, but particularly and repeatedly Black, Latinx, and Indigenous people and low- and no-income people.

DRUG TESTING IS AN OFTEN-OBSERVED, HUMILIATING, AND INVASIVE PRACTICE DRIVEN BY LAW-AND-ORDER POLITICS AND FEARMONGERING.

TESTING TECHNOLOGIES AND LIMITATIONS

A drug test measures whether or not a drug metabolite is present in a person's body, which indicates past use, not current impairment. There are multiple types of drug tests, including blood, urine, and hair tests, that can produce different outcomes. Some tests are qualitative, indicating either the presence or absence of certain drugs or drug metabolites. Other tests are quantitative, specifying exact concentrations of drugs or drug metabolites within a given sample. Results vary by the type of test and what drug is being tested for because some drug metabolites, like those from marijuana use, stay in the body for longer than metabolites for other drugs.⁶

There are numerous limitations to drug testing technologies. A drug test cannot indicate how much of a drug someone has used. It also cannot detect whether or not someone meets criteria for a substance use disorder or whether or not someone is currently impaired or under the influence. Numerous variables impact how well a test can detect a metabolite, including a

person's metabolism,⁷ weight,⁸ race,⁹ and hair care products they use.¹⁰ Evidence suggests some tests, such as urine tests, may register false positives for certain drugs.¹¹ Research has also pointed to the role of human error in distorting results – people administering the drug tests sometimes miscalibrate testing machines¹² or mishandle samples as they are prepared for testing, particularly for hair.¹³

DRUG TESTING IN EMPLOYMENT

With Ronald Reagan's crusade against drugs in the mid-1980s, he made it his goal to create "a drug-free workplace at all levels of government and in the private sector."¹⁴ The Federal government began drug testing, and Federal contractors and grantmakers, safety-sensitive job employers, and private-sector employers quickly followed suit. By 1996, nearly 85 percent of surveyed employers reported drug testing their employees,¹⁵ though this number has since declined.¹⁶

Today, every state allows drug testing in certain job settings, and 18 states allow employee drug testing in both the public and private sectors.¹⁷ Some employers will extend conditional employment offers, requiring applicants to receive a negative drug test before receiving an official job offer.¹⁸ Others subject employees to suspicionless, mandatory drug testing throughout their employment. Employers have used a positive drug test or refusal to take a test as grounds to terminate workers.¹⁹ These policies most acutely impact working-class people, with low-income people working blue collar jobs being most subjected to drug testing, despite similar rates of drug use across all classes.²⁰

Even in states where marijuana has been legalized, people can still be subject to drug tests where a positive result for marijuana will cost them their job. This is also true in states where medical marijuana has been legalized, and where use follows a doctor's recommendation.

Drug use obstructing workplace safety and productivity has been largely exaggerated, and a positive drug test cannot indicate whether or not someone will be a good employee or coworker.²¹ For positions where safety is of greater concern, like those involving driving or machine operating, drug tests cannot assess current impairment. Further, evidence suggests that accidents in the workplace are more likely associated with stress, fatigue, and illness than with drug use.²² Instead of relying on suspicionless, mandatory drug tests, employers should opt to use alternative assessment methods, including ongoing performance evaluations or performance-based tests to measure current impairment.

THESE POLICIES MOST ACUTELY IMPACT WORKING-CLASS PEOPLE, WITH LOW-INCOME PEOPLE WORKING BLUE COLLAR JOBS BEING MOST SUBJECTED TO DRUG TESTING, DESPITE SIMILAR RATES OF DRUG USE ACROSS ALL CLASSES.

Consistent, well-paid work is essential for individual and familial stability, health, and well-being. Drug testing job applicants and employees, absent evidence of drug use interfering with a person's job performance, wastes money, invades privacy, and cuts off paths to employment.

DRUG TESTING IN CHILD WELFARE

Drug war policies aimed at punishing parents who used drugs ramped up in the 1980s. Politicians and media invoked the sensationalized, racist myth of babies born addicted to crack cocaine, a myth that is unsupported by scientific evidence.²³ Social workers, physicians, and other service providers were then enlisted to drug test and subsequently separate and remove children from parents. These parents were primarily Black, Latinx, Indigenous, and low- or no- income, despite similar rates of drug use across all races and classes.²⁴ Between 1986 and 1996, the population of children removed from

their parents' care to the foster system more than doubled, and since then, these numbers remain largely unchanged.²⁵

Today, drug use – even alleged use – is still used as a mechanism to surveil and punish parents and tear apart families.²⁶ Doctors routinely drug test pregnant people and newborn babies, particularly people of color, often without verbal or written consent. Twenty-five states and the District of Columbia require physicians to report any suspicion of drug use to child welfare authorities.²⁷ Nineteen states and the District of Columbia have statutes that consider any drug use during pregnancy to be child maltreatment.²⁸ These mandates exist despite evidence showing that in utero exposure to drugs does not have long-term negative health impacts on the child.²⁹ Outside of the hospital and in the home, a positive drug test is sometimes used as justification for mandating that a parent attend abstinence-based treatment, regardless of whether the parent has a substance use disorder.³⁰ Often children are removed from their parents based on a positive drug test alone and not based on any evidence of maltreatment.³¹ Removal from family to the foster care system often does more harm than good.³²

1 IN 10

**PEOPLE IN THE UNITED STATES WITH
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For people who do struggle with drug use, drug testing and the draconian punishments that accompany it can push them to hide drug use from their healthcare providers or counselors. Fearing family separation, people may opt to not engage in honest, open conversations about healthcare needs or about how to reduce drug use harms.³³ If a parent's drug use does impact their caregiving, they deserve to be presented with a range of harm

reduction and treatment options that can help meet their needs and the needs of their children. For those who do want treatment, it is alarmingly hard to access: only 1 in 10 people in the United States with a substance use disorder receive any kind of treatment.³⁴

A positive drug test cannot indicate whether or not someone will be or is a good parent, and it cannot detect whether or not a parent has abused or maltreated their children.³⁵ Families should be sources of love and care, and too often, Black, Latinx, Indigenous, and low- or no-income homes are sites of state surveillance, intervention, and subsequent family separation.

DRUG TESTING IN EDUCATION

In the mid-1990s schools began to implement zero-tolerance policies, where any drug activity, whether real or perceived, became grounds for suspension or expulsion. With these policies came the arrival of law enforcement, metal detectors, and random student drug testing in schools, all in the name of eliminating a perceived, but unfounded, uptick in youth drug use and violence.³⁶

Today, over one-third of school districts have policies for drug testing students.³⁷ Drug tests are not only invasive and humiliating for students but are counterproductive because they result in exclusion from time spent in school and extracurriculars and remove potential support resources. Widespread drug testing and surveillance of students have made drug use the second-highest source of referrals of students to the police.³⁸ Drug testing, combined with other criminalizing tactics, has had dire effects on Black, Latinx, and Indigenous students, with higher rates of suspensions, expulsions, and arrests among students of color than white students.³⁹ Every time a student drops out, their risk of poorer employment⁴⁰ and negative health outcomes⁴¹ increases, including the likelihood of developing a substance use disorder.⁴²

While most young people do not use drugs (and if they do, use infrequently),⁴³ for students that do use problematically or have substance use disorders, punishment and criminalization will not actually deter drug use. Students who want to seek harm reduction services or substance use disorder treatment should be able to opt into those services and should not be suspended or excluded from school and extracurricular activities.

A positive drug test does not indicate whether or not someone will be an active and participatory student. Drug testing erodes trust between students and their teachers and counselors, violates what should be a space of safety and support, encourages students to hide drug use, and thrusts young people into the criminal legal system.

DRUG TESTING IN PUBLIC BENEFITS

In 1996, decades into the war on drugs, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act, ending “welfare as we know it.”⁴⁴ This law weakened the social safety net – including cash and food assistance – and has had particularly devastating effects on people with drug convictions, people who use drugs, and their families. Included in the legislation was a provision authorizing states to drug test applicants and recipients of Temporary Assistance for Needy Families (TANF) and punish those who tested positive.

Today, 13 states drug test TANF recipients.⁴⁵ Some states require people with felony drug convictions to take a drug test, while others “screen” for drug use and then require a test if there is suspicion of drug use.⁴⁶ In most states, a positive drug test disqualifies a person from receiving TANF benefits.⁴⁷ In some states, a positive drug test may be used to require recipients to complete abstinence-based treatment in order to receive benefits.⁴⁸ Sanctions increase risk of hunger, eviction and homelessness, utility shut-off, and inadequate healthcare.⁴⁹ These drug testing policies have targeted impacts on Black, Latinx, and Indigenous people, who are disproportionately likely to receive sanctions⁵⁰ and who are disproportionately poor because of centuries of racism and structural inequities.⁵¹

Drug testing TANF recipients wastes over one million dollars per year.⁵² Many TANF recipients have to pay for the tests or treatment themselves, which can cost upwards of \$100, and cost taxpayers thousands of dollars per year.⁵³ Though estimates suggest that very few TANF applicants and recipients test positive – less than one percent – the test and these costs alone act as enormous barriers to receiving TANF, for many people do not have enough disposable income to afford a drug test. Some TANF applicants opt out of benefits altogether because the surveillance and supervision they are forced to endure are not worth the benefits.⁵⁴

Public benefits and a robust social safety net improve individual and familial health and wellbeing,⁵⁵ particularly for people who use drugs.⁵⁶ A positive drug test does not indicate whether or not someone will be a caring community member. Everyone deserves to have their needs met and have the autonomy to decide how best to use cash assistance. Drug testing of TANF recipients is invasive and patronizing and unjustly strips people of the ability to better care for themselves and their families.

DRUG TESTING IN THE CRIMINAL LEGAL SYSTEM

As drug testing spread into civil systems, it also expanded throughout the criminal legal system in the 1980s and 1990s. Though drug courts, probation, and parole have been branded by some as alternatives to incarceration or as diversion programs, they actually hasten reentry into prison and jail, extend time under state surveillance and supervision, and trap people in a cycle of punishment. Drug testing is a primary means through which drug courts and community supervision target, watch, and criminalize people.

Drug courts, intended to divert people from incarceration and into treatment, arose in the 1980s as a response to an overloaded court system driven by drug war policies.⁵⁷ Though drug court practices differ by jurisdiction, most require participants to plead guilty and then mandate them to abstinence-based treatment, regardless of whether or not

they have substance use disorders or want or need treatment.⁵⁸ Many drug courts require participants to discontinue buprenorphine or methadone, the gold standards for medications for opioid use disorder, within 30 days,⁵⁹ and less than half of drug court participants with opioid use disorders receive medications for addiction treatment (MAT). Abstinence is monitored through random and frequent drug testing. A positive drug test can trigger sanctions, removal from the drug court program, or incarceration.⁶⁰ These practices ignore the fact that reuse and relapse are common for people who choose abstinence – people should not be threatened with criminalization or sent to prison or jail as punishment.

In addition to the unrealistic mandate of abstinence, drug testing drug court participants saddles people with hefty fees. Drug tests can cost individuals up to \$60 out-of-pocket.⁶¹ Often, people are notified that they must immediately report for a drug test, requiring them to make the difficult choice of whether or not to drop all family and job obligations to report for a test, sometimes dozens of miles away.⁶² Refusal to take a drug test for any reason can result in legal sanctions and punishments.

As the use of drug courts grew, so too did the use of probation and parole: between 1980 and 2007, the population under community supervision increased fourfold.⁶³ Today, over 750,000 people – or 25 percent of all people under community supervision – are on probation or parole for a drug law violation.⁶⁴ The terms of probation and parole require people to adhere to strict, sometimes impossible-to-follow rules. Among these rules is the requirement to submit to random, suspicionless drug tests, regardless of whether a person's underlying conviction was for a drug offense.

Alarming, most people under community supervision who are sent back to prison or jail are not convicted of new offenses but, rather, have violated a technical requirement of their supervision, like a positive drug test.⁶⁵ A positive drug test is one of the top rule violations that causes someone on probation or parole to be re-incarcerated, with estimates showing that 15 to 25 percent of all rule violations stem from drug use or drug possession.⁶⁶

A positive drug test can also result in mandated substance use disorder treatment, which evidence suggests does not improve outcomes and in some cases, can create more harm.⁶⁷ Drug testing people on probation and parole is not used as a way to connect people with harm reduction and evidence-based treatment services but instead functions as a way to target people who use drugs, who are often otherwise working to care for themselves and loved ones and rebuild their lives.

15-25%

OF ALL PROBATION OR PAROLE RULE VIOLATIONS STEM FROM DRUG USE OR DRUG POSSESSION.

Incarcerating people participating in drug court programs or people under community supervision for a positive drug test worsens health outcomes for people who use drugs. Less than one percent of prisons and jails in the U.S. offer methadone or buprenorphine.⁶⁸ Compared to the general population, people released from prison or jail who did not receive MAT while incarcerated have a 10 to 40 times higher risk of overdose death within the first two weeks after their release.⁶⁹ Incarceration can be deadly for people who use drugs, and it also disrupts stable employment, education, and familial caretaking responsibilities.

PUTTING AN END TO DRUG TESTING

Policymakers and the media have proclaimed the need to prioritize public health over punishment. But the drug war rages on, particularly through insidious measures like drug testing, where employers, teachers, counselors, social workers, and judges play the role of the police. Though widely employed in the civil and criminal legal systems, drug testing has done nothing to deter use in broad terms, and in fact, drug use rates have remained stable and relatively low over the past 50 years. What has gone up is overdose deaths: in 2019, the United States saw a record high number of 70,000 drug

overdose deaths. Drug testing has not connected more people to healthcare and treatment options. Instead, it deters people from seeking needed care, has denied people essential means to survive, and has ripped apart families. To reduce drug use harms and overdose deaths, we need evidence-based drug education; harm reduction services like supervised consumption sites, drug checking, syringe exchanges, and naloxone access; and an array of low-threshold treatment options.

Drug testing serves as another way to deny care and to target, surveil, and criminalize people – both those who use drugs and do not – particularly Black, Latinx, and Indigenous people and low- and no-income people. Ending the drug war means ending drug war surveillance and stopping practices that monitor and punish rather than increase health, safety, and autonomy.

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